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NTSB AUTHORIZATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

MAY 10, 1990

Printed for the use of the
Committee on Commerce, Science, and Transportation

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NTSB AUTHORIZATION

THURSDAY, MAY 10, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:14 p.m. in room SR-253, Russell Senate Office Building, Hon. Wendell Ford (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Sam Whitehorn, staff counsel; Carol Carmody, professional staff member; Gerri Hall, minority professional staff member; and John Timmons, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good afternoon, ladies and gentlemen. I am very pleased to be chairing the hearing today. After the National Transportation Safety Board nominations were finally approved by Congress, this opportunity to talk about the issues confronting the NTSB is a pleasure.

I was delighted to read in the "Washington Post" this week that everything finally seems to be back to normal. Last year the NTSB sent out more go teams in the history of the agency. I was pleased to see that Chairman Kolstad was successful in getting more funds for the agency in the President's budget. After many years of no growth, it is good to see that the agency will be able to hire critically needed staff to investigate and determine the cause of aviation, highway, rail, pipeline and marine accidents.

Jim, I know that you have a meeting scheduled on the West Coast, so I will attempt to get you to the airport as soon as possible. I appreciate your changing your travel schedules in order to accommodate the committee.

My ranking member, Senator McCain, is holding another hearing at this time. He advised us to proceed, and he will be here as soon as possible.

I have a statement that Senator Hollings would like to have included in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

I welcome Mr. Kolstad this afternoon to discuss the reauthorization of the National Transportation Safety Board [NTSB]. In addition, I welcome Henry Duffy, President, of the Air Line Pilots Association [ALPA], who also will testify at today's hearing.

The work of the NTSB is critical to the safety of the traveling public. The agency's expertise and independence enable it to review critically accidents involving all fields of transportation. The agency responds immediately to accidents and begins to evaluate the causes. As a result of these investigations, it issues safety recommendations that are directed at those able to take the appropriate action to upgrade safety.

In the aviation area, the NTSB recently issued a preliminary report on the factors that caused the Avianca crash in Cove Neck, New York that resulted in 73 deaths. This type of thorough investigation hopefully will reduce the possibility of similar occurrences.

I also am aware that the NTSB and ALPA are discussing how to safeguard cockpit voice recorder information, while at the same time facilitating the investigation of aircraft accidents and incidents. This type of cooperation is much needed in the interest of safety.

In other transportation areas, the NTSB recently looked at 182 accidents in which a truck driver was killed to determine the extent of the use of alcohol and drugs. Almost 33 percent of the drivers had alcohol and/or drugs in their systems. This is a frightening proposition for all of us.

The use of alcohol and drugs by those in the transportation system cannot be tolerated. To this end, I remain committed to mandatory drug and alcohol testing, including random testing, of transportation workers, and I continue to seek enactment of S. 561, which I introduced along with Senator Danforth and which the Senate has passed in several forms, but which inexcusably still awaits House action.

In addition, I recently sent Secretary of Transportation Skinner a letter, with Senator Danforth, urging the adoption of alcohol testing regulations. The work of the NTSB supports the need for such regulations, and I look forward to seeing the Department's rules in the near future.

I hope that the NTSB will continue to look at ways to combat the use of drugs and alcohol that recognize the safety needs of the traveling public as well as the dignity of those within the affected industries. We simply cannot have a repeat of the recent incident involving three Northwest crew members who were suspended from their jobs for being alcohol-impaired while on the job. Such abuse could have resulted in a significant loss of life. It is imperative that we act now to prevent further such abuse.

I look forward to hearing from the witnesses today, and to working with the NTSB to address the many transportation safety issues that confront us.

Senator FORD. Mr. Chairman, if you want to come forward and begin your testimony, we would be very pleased to take it. You may include your statement in full in the record and highlight it or however you care to proceed. You have been here before, so it is up to you. I am glad to see that you are well supported.

STATEMENT OF HON. JAMES L. KOLSTAD, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD, ACCOMPANIED BY DANIEL CAMPBELL, GENERAL COUNSEL; BERNARD LOEB, DIRECTOR, RESEARCH AND ENGINEERING; LLOYD MILLER, ACTING MANAGING DIRECTOR; AND MIKE LEVINS, DIRECTOR, ADMINISTRATION

Mr. KOLSTAD. Thank you, sir. I appreciate your remarks.

Before beginning, I will introduce the staff here with me at the table. To my far left is Mr. Dan Campbell, who is the Board's general counsel. Next to him is Dr. Bernie Loeb, who is head of the new Office of Research and Engineering. To my immediate right is the Acting Managing Director, Lloyd Miller. To his right is Mr. Mike Levins, who is the head of the Office of Administration.

Senator FORD. We are delighted to have them join you on the panel and look forward to their answering questions.

Mr. KOLSTAD. On behalf of all of the Members of the Board and the staff, I want to express our sincere appreciation for your con-

tinuing efforts and for your support. We very much look forward to working very closely with the committee.

Senator FORD. I intend to see that that occurs.

Mr. KOLSTAD. Thank you.

For many years the Safety Board has been faced with a declining staff level, as you have noted, Mr. Chairman, while its workload has become increasingly voluminous and complex. As Chairman, my goal is not only to stem but to reverse this gradual erosion of the Board's resources which I think are critical to the continued effectiveness of our accident investigation and safety recommendation activities.

Indeed, my number one priority is to strengthen and rebuild the Safety Board. I am very pleased that we have been able to get 22 new positions from OMB. I am also pleased that we have been able to put into place a new reorganization which I think has been long overdue and badly needed.

Briefly, I have organized the staff along modal responsibilities. The Board's Bureaus of Accident Investigation, Technology, Field Operations and Safety Programs have been restructured into four new offices. First, all aviation accidents from major airliners to the smallest general aviation aircraft will now be investigated by the Office of Aviation Safety. We are also hiring technical writers to speed the issuance of our accident reports, which I am sorry to say now often take more than a year to complete. That is simply too long.

Second, the Office of Surface Transportation Safety is responsible for investigating accidents in the rail, highway, marine and pipeline modes.

Third, the Office of Research and Engineering comprises technical staff who have multi-modal responsibilities such as the metallurgical and data recorder laboratories, and the Safety Studies Division.

Fourth, a new Office of Safety Recommendations has been established. Safety Recommendations is the culmination of the Board's many efforts, and achieving our mission of improving safety is in great part dependent upon getting our recommendations adopted. I expect this office to focus more on implementation of our recommendations.

Since our last reauthorization hearing, the Safety Board has concluded a period marked by tragedies in every mode of transportation: the United Airlines Sioux City accident killing 111 persons on board; the *Exxon Valdez* accident which is the worst oil spill in U.S. history; the Amtrak train accident in Chase, Maryland, that killed 17 persons; and the Carrollton, Kentucky, church bus/truck accident which was the worst drunk driving accident in history which killed 27 passengers, mostly children.

In the past year as you noted, Mr. Chairman, we launched 51 go teams to major accidents in all modes of transportation. That is almost one a week and the busiest year in the Board's history. This level of activity put a severe strain on the Board's staff.

In order to rebuild the staff to a level commensurate with its workload, the NTSB is requesting authorization levels of $31 million and 348 FTEs for fiscal year 1991, $38.6 million and 381 FTES for fiscal year 1992, and $38.8 million and 381 FTEs for fiscal year

1993. The additional 33 FTE positions requested for fiscal years 1992 and 1993, the most significant resource change from our previous authorization levels, are, I think, important to ensuring that the Board has the resources we feel are necessary to meet the expected requirements over the next three years.

Twelve of these positions will be dedicated to further enhancing the staffing depth in several of our critical technical specialties. This will help reduce the need for these specialists to be continully on call and working on back-to-back accidents when they occur.

This will also allow the specialists to receive the training necessary to maintain their currency in state of the art technologies which a lack of staffing depth has forced us to limit severely.

An additional 11 positions will be allocated to enhance our accident investigation program. This will not only improve the scope of our accident investigations and the timeliness and quality of our written reports, but also increase the number of safety improvement recommendations to correct identified safety problems.

Six positions will be allocated to our aviation appeals program to further reduce the current processing time of those cases from almost 20 months to a more acceptable 12 months. As a result of enforcement actions taken by the FAA, appeals of those actions to the Safety Board has doubled.

This has resulted in an unacceptable backlog of about 1,000 cases. It is expected that incoming cases may reach the 1,500 level by fiscal year 1991. This not only poses a serious threat to the FAA's enforcement efforts, but it also creates a serious potential safety hazard, since the action taken against an airman is stayed until final disposition of the case.

Two positions are required to enhance our safety recommendations and safety studies program to the aviation and railroad modes.

Finally, two positions are necessary to maintain our microcomputer systems which the Board plans to upgrade in fiscal year 1992.

Although the Safety Board is known throughout the world for its achievements in investigating aircraft accidents, it also has a long and distinguished record of promoting marine safety. Since the Board's creation in 1966, we have investigated hundreds of marine accidents, we have issued a number of major safety studies, and we have adopted more than 1,500 marine safety recommendations.

Last fall we issued a major study of passenger vessel safety in the United States. It reviewed three broad groups of vessels, domestic passenger vessels, foreign flag passenger vessels which regularly operate from U.S. ports, and some State regulated domestic passenger vessels.

As a result of this study, past marine investigations and the most recent tragic *Scandinavian Star* accident in Swedish waters, the Board is concerned that there is a serious potential for a high loss of life. There are two principal reasons for this concern. First, since 1974 the cruise industry has expanded from a handful of vessels operating in the United States to more than 100 in 1989. The United States is the host nation for about 80 percent of the world's passenger vessels. The vessels are growing larger, the new more exotic

vessels are certificated for up to 2,600 passengers. Some newer vessels may have passenger loads in excess of 4,000 passengers.

The second reason for our concern is the age of foreign flag vessels. Approximately 70 percent of these vessels were built prior to the implementation of the 1974 Safety of Life Sea Convention. The passenger vessel industry has had accidents with large loss of life, and several recent accidents involving foreign flag vessels raise serious safety issues and highlight our concern.

The Safety Board's primary authority to investigate accidents is not applicable to an accident in international waters involving a foreign registered vessel even though it may carry U.S. citizens. For example, if the *Scandinavian Star* accident had occurred 13 miles offshore the United States, we would have been unable under our current authorization to investigate this accident even though it may have been full of U.S. passengers.

The Board has frequently relied on the more general authority which allows us to investigate certain other accidents, but the recent rejection by the court of the Board's reliance on this authority to investigate the collision between the *Celebration* and the *Captain San Luis* in international waters north of Cuba triggered this request for legislation.

While the Safety Board is pleased that the DOT now has drug rules which cover all modes of transportation, we are concerned about weaknesses and inconsistencies in these rules. For example, in aviation the rule requires the collection of urine only and within 32 hours of an accident. In the rail mode urine and blood samples are required as soon as possible after the accident or incident.

We think there should be uniform regulations for all modes of transportation and that the testing should include the presence of alcohol as well as drugs in all modes, that the testing for drugs should be expanded, and that both blood and urine samples be required as soon as possible after the accident or incident.

While we are not seeking legislation in these areas, we have expressed our concern to the DOT through our safety recommendations.

Another concern regarding the testing of Federal employees is the inability of the Safety Board to obtain the results of the testing. To assist the Board in fulfilling its safety responsibilities, the NTSB has the extraordinary authority to order and obtain results of autopsies and other tests on persons who die in accidents. The information obtained from these tests has resulted in the development and implementation of recommendations and procedures to prevent accidents.

One of the most, if not the most, important objectives of post-accident/incident drug and alcohol testing is to determine whether drugs or alcohol caused or contributed to the cause of a transportation accident/incident. Meaningful post-accident or incident testing requires the collection of blood and urine as quickly as possible after the accident or incident, preferably within four hours.

Without the results of meaningful tests, the actual cause of an accident may be extremely difficult to establish, and all of the factors that contribute to or cause accidents may not be identified; therefore, the opportunity for effective remedial measures may be lost.

During an accident investigation, information on drug abuse by a Federal employee in a safety-sensitive position will not be made available to the investigators unless the employee gives written authorization. If Federal employees in safety-sensitive positions, such as air traffic controllers, are free to withhold the results of post-accident or incident toxicological test results from the NTSB, whether positive or negative, the NTSB's mandate to determine and publicly report the facts, circumstances, and probable cause of the occurrence and to develop safety recommendations is going to be jeopardized.

For example, following a fatal accident on August 14, 1989 near Edison, New Jersey, an air traffic controller at the New York terminal radar approach control who had provided radar services was given a toxicological test following the accident. However, the FAA, citing Executive Order 12565, refused to provide the results of the test to the NTSB. A direct request by NTSB to the controller for the results of the tests produced another refusal, this time from the controller.

In contrast, testing results from persons in the private sector are released to the NTSB without the consent of the individuals. The Safety Board believes there should be no difference in the disclosure to the Board of toxicological test results of private persons and Federal employees, and that Congress should eliminate this impediment to transportation safety that is caused by this restriction.

Mr. Chairman, that completes my statement. I would be more than happy, and I know the staff would as well, to respond to any questions that you might have.

[The statement follows:]

Testimony of

James L. Kolstad, Chairman

National Transportation Safety Board

Mr. Chairman, Members of the Committee, I am pleased to appear before you on behalf of the National Transportation Safety Board. Your support of the Safety Board has had a major and beneficial impact on the Board's effectiveness. The other Members of the Board, the staff and I are very grateful for your active interest and support in our work. We look forward to continuing our cooperative relationship.

For many years the Safety Board has been faced with a declining staff level while its workload has become increasingly voluminous and complex. As Chairman, my goal is not only to stem, but to reverse this gradual erosion of the Board's resources which are critical to the continued effectiveness of our accident investigation and safety recommendation activities. Indeed, my number one priority is to strengthen and rebuild the Safety Board. I am very pleased that, by working with OMB, we have been able to add 22 new positions to the FY 91 budget, the second highest increase in the Board's history. Additional resources are deeply needed. Also needed for a long time is a change in the Board's organization and structure.

In that regard, I announced recently a major restructuring of the Board's staff, the first such action in almost 14 years. I expect our new structure to streamline our investigations and strengthen our safety recommendation process.

Briefly, I have organized the staff along modal responsibilities. The Board's Bureaus of Accident Investigation, Technology, Field Operations and Safety Programs have been restructured into four new offices:

-- All aviation accidents, from major airliners to the smallest general aviation aircraft, will be investigated by the Office of Aviation Safety. We are hiring technical writers to speed the issuance of our accident reports, which now often take more than a year to complete. That is too long.

-- The Office of Surface Transportation Safety will be responsible for investigating accidents in the rail, highway, marine and pipeline modes.

-- The Office of Research and Engineering will comprise technical staff who have multimodal responsibilities, such as the materials and data recorder laboratories, and the safety studies division.

-- A new Office of Safety Recommendations will be established. Safety recommendations are the culmination of the Board's many efforts. Achieving our mission of improving safety is in great part, dependent on getting our recommendations adopted, and I expect this office to focus more Board resources on this effort.

My mission today is to request your support once again -- specifically for our three-year reauthorization proposal. In addition to requesting increases in our authorization level and full-time equivalent employees (FTE), the Safety Board is requesting legislative proposals designed to increase our effectiveness in carrying our basic legislative mandate.

As you know, the Board's mission is to investigate transportation accidents, determine their probable cause and make recommendations designed to prevent such accidents from recurring. We also conduct special safety studies and investigations as warranted to assure public safety.

This mission is rooted in our history. The beginnings of the Safety Board go back to the Air Commerce Act of 1926, which gave the Commerce Department the authority to determine the cause of aviation accidents. This function was carried out by a small unit within the Department known as the Aeronautics Branch; later, it was replaced by an independent Air Safety Board.

In 1940, Congress created the Civil Aeronautics Board and included in the new agency a Bureau of Safety. In 1967, this bureau formed the nucleus of the newly created National Transportation Safety Board whose authority was expanded beyond aviation to include accident investigation authority in three other modes: railroad, highway, and marine. Pipeline safety was added later.

Although independent, the Board originally was placed within the Department of Transportation (DOT). In 1974, Congress passed the Independent Safety Board Act, giving the Board increased authority in accident investigation and severing its ties with DOT. With the new staff structure I described earlier, Mr. Chairman, I believe we are positioned to successfully enter the transportation environment of the '90s.

The Safety Board, since our last authorization hearing, has concluded a period marked by tragedies; the United Airlines Sioux City accident killing 111 persons on board; the EXXON VALDEZ accident -- the worst oil spill in U.S. history; the Amtrak train accident in Chase, Maryland; and the Carrollton, Kentucky church bus/truck accident, the worst drunk driving accident in U.S. history, killing 27 persons. Just in the past year we have launched 51 go-teams to major accidents -- almost one per week. This is the highest number of major investigations the Board has ever undertaken.

The Safety Board is proud of its mission and its role in improving the safety of our public transportation systems. We are also proud of our management team. These dedicated people provide leadership and direction to our highly motivated and talented staff. They all deserve tremendous credit for our accomplishments, particularly in the current environment of cost cutting. Before I begin a discussion of our reauthorization request, let me review some highlights of the past year's activities.

Aviation

In aviation we saw a decrease in total accident rates for U.S. air carriers and commuters; however, an increase in fatal accident rates. In fact, the actual number of fatal accidents for air carriers was the highest since 1968.

Our major aviation investigations during the past year included the July crash of the United Airlines DC-10 in Sioux City, Iowa in which 111 persons were killed, and more recently the Avianca accident in Cove Neck, New York, where 73 persons died as a result of the accident. Aviation accidents were also fatal to two Members of Congress -- Congressman Mickey Leland and Congressman Larkin Smith, and to a Member of the Safety Board, Joseph Nall.

While accident rates decreased in 1989, we do face some issues that cause concern and require solution. For instance, inadequate pilot training and experience in air carrier operations were factors in several major accident

investigations. FAA oversight of flightcrew training programs, the pairing of pilots with limited experience, and crew coordination are among the issues the Safety Board is addressing. Evidence of continuing deficiencies in oversight of airline company operations has led us to review the adequacy of FAA surveillance of air carrier operations. The Safety Board has found instances, through major accident investigations, where improvements are needed.

The airworthiness of aging aircraft in the United States is an issue justifying continued and emphasized attention. Efforts on behalf of the airlines, airframe manufacturers and the FAA have led to the issuance of some proposed rules and final rules to mandate modifications and part replacement on several models of airplanes as they approach their service life.

The Safety Board is also giving a great deal of attention to collision avoidance -- air and ground -- and air traffic control operations. We believe the potential for increases in collisions on the ground will increase as the number of operations at existing airports increase. Air traffic control, specifically controller training and the human factors issues involved, is of major concern to the Safety Board.

General aviation accident investigations totalled 2167 in 1989, all accomplished by our hard-working field staff located in ten regional offices. Field staff also conducted 11 major accident investigations and 200 air carrier, commuter and air taxi investigations in 1989.

As in previous years, the Safety Board has participated in a number of major foreign accident investigations during the past year. In addition to

the direct safety benefits realized from foreign accident investigations, the Board's involvement provides a critical contribution to U.S. foreign relations. We recently participated in the investigation of the Indian Airlines Airbus accident. The Safety Board provided assistance to the Indian Government in the readout of the Digital Flight Data Recorder and the investigation of the accident.

Railroad

Some of the issues involved in the Safety Board's railroad activities include passenger car and locomotive crashworthiness, crew fatigue, alcohol and drugs, collision avoidance, and hazardous materials. The Safety Board most recently investigated the March 7, 1990 Southeastern Pennsylvania Transportation Authority (SEPTA) commuter train accident in Philadelphia, Pennsylvania. Urgent safety recommendations were made to SEPTA and a Public Hearing will be conducted sometime in May to focus on the issue of oversight of the SEPTA system.

Highway

In the highway mode, the Safety Board's attention has focused on bridge safety, schoolbus safety and the operators of heavy trucks. As the Nation's highway system matures, the Safety Board is increasingly concerned about its aging highway bridges. As a result of two major bridge collapse investigations last year, the Safety Board is focusing on the issue of the adequacy and oversight of underwater bridge inspection programs. During 1989

the Board investigated a major schoolbus accident in Alton, Texas, and completed a study of the crash performance of small schoolbuses and vans used for school transportation. In 1989, the Board issued its report of the worst drunk driving accident in U.S. history -- the tragic church bus/truck accident at Carrollton, Kentucky that killed 27 people -- the Board called upon all State Governors to refocus their efforts on the drunk driving problem -- a problem that claimed 23,500 lives in 1988.

Recent Safety Board efforts in the area of trucking safety have focused on driver performance issues, such as fatigue and alcohol and other drug use. In a recently completed study on drug and alcohol involvement in fatal-to-the-driver heavy truck crashes, we found that 33 percent of the drivers tested positive for drugs and alcohol. Driver impairment from fatigue and alcohol and drug use were most frequently cited as the cause or factor in accidents.

Marine

The investigation of the EXXON VALDEZ, the worst oil spill in United States' history, is still ongoing. We hope to issue a report and safety recommendations in about three to four months.

In October, the Safety Board adopted a report on the safety of passenger vessels operating from U.S. ports. As a result of this study, the Board issued 41 new safety recommendations and reiterated a number of previous recommendations. We found the biggest need for improvement in safety was in the rapidly growing cruise industry dominated by ships that are flagged in

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foreign countries and do not come under the more stringent U.S. Coast Guard inspection standards. The Safety Board is participating as an observer in the investigation of the most recent, tragic SCANDINAVIAN STAR accident in Swedish waters. I will elaborate on this issue later in my testimony.

Hazardous Materials

Hazardous materials safety issues cut across all modes of transportation. Better packaging and improved hazard identification, a more complete description of hazardous materials, the routing of hazardous materials, and improved response are all issues which have arisen from our accident investigations and areas we are addressing.

Pipeline

The Safety Board has been involved in and concluded the investigations of several pipeline accidents, including five accidents involving the same gas company in Kansas and Missouri during 1988 and 1989. In its final report on these accidents, the Safety Board found that Kansas Power and Light (KPL) failed to protect the pipeline from corrosion damage, did not properly monitor excavations and failed to adequately train its employees. The Board also found inadequate State oversight of pipeline companies. Several recommendations were issued to KPL and the DOT addressing these issues.

The current investigation of the accident of the fishing vessel NORTHUMBERLAND, which ruptured an underwater gas pipeline, has highlighted the issue of offshore pipelines. The Safety Board has already issued safety recommendations to the DOT and Department of Interior addressing some of these issues.

Now I will review the Safety Board's three-year authorization and legislative proposals.

General Authorization

In order to rebuild the staff to a level commensurate with its important role in a rapidly expanding and complex transportation environment, the National Transportation Safety Board is requesting authorization levels of $31 million and 348 FTEs for fiscal year 1991, $38.6 million and 381 FTEs for fiscal year 1992, and $38.8 million and 381 FTEs for fiscal year 1993. The requested authorization for fiscal year 1991 is consistent with the Safety Board's 1991 appropriation request. The 33 additional FTE positions requested for fiscal years 1992 and 1993, the most significant resource change from our previous authorization levels, are critical to rebuilding efforts.

Twelve of these positions will be dedicated to further enhancing the staffing depth of several of our critical technical specialties. This will reduce the need for these specialists to be continually on-call and working on back-to-back accidents when they occur. This also will allow these specialists to receive the training necessary to maintain their currency in state-of-the-art technologies. A lack of staffing depth has forced us to limit this training severely.

An additional eleven positions will be allocated to enhance our accident investigation program. Five of these positions are required to improve our coverage of major catastrophic accidents. This will not only improve the scope of our accident investigations and the timeliness and quality of our written reports, but also will increase the number of safety improvement recommendations to correct identified safety problems. The other six positions will be allocated to enhance our investigation of non-catastrophic accidents, which often result in significant system-wide safety improvements.

Six positions will be allocated to our aviation appeals program to further reduce the current processing time of our appeal cases from almost 20 months to a more acceptable 12 months. As a result of enforcement actions taken by the FAA, appeals of those actions to the Safety Board has doubled, resulting in an unacceptable backlog of approximately 1,000 cases. It is expected that incoming cases will reach the 1,500 level by fiscal year 1991. Without these additional positions, the processing time for these appeals could approach more than two years. This not only poses a serious threat to the FAA's enforcement efforts, but also creates a serious potential hazard to the safety of persons and property, since the action taken against an airman is stayed until final disposition of the case, thus allowing the airman access to the airspace system as if no action had been taken.

Two positions are required to enhance our safety recommendations and safety studies programs; one for aviation and one for rail.

Finally, two positions are necessary to maintain our microcomputer systems. During FY 1992, the Board plans to upgrade its microcomputer systems with additional CRTs, printers, modems, new application software, and expanded local area network communications capability. Productivity improvements resulting from expanded use of microcomputers will allow the Safety Board to accommodate workload increases without corresponding increases in staff. The additional positions are needed to accommodate the expanded microcomputer network which now can be accomplished only on a limited basis by one individual who, in addition to other duties, also supports the Board's current mainframe computer.

In addition to an increase in staff, the requested authorization for fiscal years 1992 and 1993 also includes funds to cover increased costs related to pay raises, civilian benefits (FERS and health benefits), inflation, and promotions and within-grade increases.

The request for fiscal year 1992 also includes increases for office relocations, training, ADP equipment, laboratory/investigative equipment and software, and chemical/toxicological testing, all of which are essential to our obtaining the most efficient and effective use of our resources.

The requested authorization level for fiscal year 1993 reflects the deletion of a one-time increase of $1.98 million, such as Regional Office relocations and computer mainframe purchase that are included in the FY 1992 requested level.

Marine Accident Investigations

Investigators are still sifting through the charred interior of the SCANDINAVIAN STAR nearly two weeks after a raging fire killed 160 people. While the facts of this tragedy are just beginning to come to light, press and survivor accounts indicate that after the fire began there were problems with the ship's emergency alarm system, fire doors, ventilation system, crew emergency training, and crew-passenger communications.

Sadly, our investigation of a major fire aboard the vessel just two years ago under different ownership, also identified some of the very problem areas survivors have reported this past week: the inability of the crew to communicate with passengers during the fire, malfunctions of key fire fighting systems (ventilation dampers, fire doors, lack of breathing equipment, CO_2 extinguisher system), inadequate crew (and passenger) emergency training, and incomplete passenger manifests and procedures for accounting for all passengers at lifeboat and muster stations. Let me point out that these findings were feasible only because there was at least a reluctant cooperation from the owners.

This present fire is the third on board the SCANDINAVIAN STAR in the last five years, and the second major fire, including the one the Safety Board investigated in the Gulf of Mexico on March 15, 1988. We also learned during that investigation that this ship had had ten accidents prior to the 1988 fire, including a collision in Tampa Bay, a fuel leak, major equipment failures, and two groundings.

We take no satisfaction in saying that had our recommendations on the 1988 accident been adopted, perhaps lives would have been saved. But we have yet another fear, and that is that without additional authority, we may be unable to investigate a marine accident that might lead to important safety recommendations.

Had the SCANDINAVIAN STAR been carrying hundreds of U.S. passengers off the Florida coast instead of Europeans in the North Sea, neither the National Transportation Safety Board nor the U.S. Coast Guard would have been able to investigate this accident without the owner's permission.

Congress made the NTSB a completely independent agency in 1974 because of the recognition that the proper conduct of the responsibilities of the Safety Board requires vigorous investigation of transportation modes regulated by other agencies of Government. Thus, the NTSB is not a part of, or affiliated with, any component of the DOT, including the U.S. Coast Guard. As previously mentioned, Congress charged the Board with the responsibility to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations. Although the Safety Board is known throughout the world for its achievements in investigating aircraft accidents, it also has a long and distinguished record of promoting marine safety. Since the Safety Board's creation in 1966, it has investigated hundreds of marine accidents, issued a number of major safety studies, and adopted more than 1,500 marine safety recommendations.

Because of the Board's growing concern over the increasing number of foreign flagged vessels operating from U.S. ports, the Safety Board began a major study of passenger vessel safety in the United States. On October 11, 1989, the Safety Board issued its report that reviewed safety issues for three broad groups of vessels: Domestic passenger vessels, foreign flag passenger vessels operating from U.S. ports embarking and disembarking U.S. citizens, and some state-regulated domestic passenger vessels.

The Safety Study explored many safety issues relative to passenger vessels, including:

-- safety oversight;

-- fire protection;

-- shoreside fire contingency planning;

-- training and drills;

-- language barriers;

-- accident reporting and investigation;

-- interpretation of international regulations;

-- use of U.S. small passenger vessel regulations to circumvent international regulations;

-- location of lifejackets;

-- mass casualty planning;

-- application of U.S. alcohol and drug rules to foreign flag passenger vessels.

As a result of this study and past marine accident investigations, the Safety Board is very concerned that there is a serious potential for a high loss of life. There are three principal reasons for this concern. First, since 1974, the cruise industry has expanded from a handful of vessels operating in the U.S. to over 100 in 1989. The United States is the host nation for about 80 percent of the world's large passenger vessels. The vessels are growing larger, and the newer, more exotic vessels are certificated for 2,600 passengers. Some newer vessels may have passenger loads in excess of 4,000.

The second reason for this concern is the age of foreign flag passenger vessels operating from U.S. ports embarking and disembarking U.S. citizens. Approximately 70 percent of the vessels operating in the U.S. were built prior to the implementation of the 1974 Safety of Life at Sea Convention (SOLAS -- the international safety requirements), and approximately 25 percent are more than 30 years old. The Safety Board believes that as the demand for passenger vessels continues in the profitable U.S. market, the quickest and cheapest way to enter the market is to retrofit older vessels. These vessels, however, are not required to meet the relatively more stringent safety requirements of new vessels. Parts of the vessel not affected by the retrofit are not required to meet the new requirements and are generally "grandfathered" and allowed to continue to meet the older SOLAS requirements.

Our third concern relates to the need for additional Coast Guard authority to enable it to conduct a more comprehensive examination of these vessels prior to their inauguration of service from U.S. ports, and the

ability to order necessary changes. Some of the proposed new cruise vessel designs feature multi-deck high, glass-covered atriums -- literally floating hotels -- that present a severe challenge to fire control and safety. Moreover, if the Coast Guard had the authority to require, for example, the retrofit of sprinkler systems in older vessels such as the SCANDINAVIAN STAR, safety would be dramatically improved.

The passenger vessel industry operating to and from U.S. ports has had accidents with large loss of life, such as the fire on the Panamanian passenger vessel YARMOUTH CASTLE on November 13, 1965 (87 passengers were killed).

Several other accidents involving the foreign flag passenger vessels highlight the NTSB's concern. On November 8, 1988, the Norwegian passenger vessel SONG OF AMERICA operated by the Miami-based Royal Caribbean Cruise Lines, a piston seized in one of its engines resulting in a fire. On February 10, 1989, the Liberian passsenger vessel CELEBRATION operated by the Miami-based Carnival Cruise Lines, struck and sank the Cuban bulk cement carrier CAPITAN SAN LUIS off the coast of Cuba; 3 lives were lost and 12 persons injured. On February 15, 1989, the Panamanian passenger vessel VIKING PRINCESS operated by the West Palm Beach Crown Cruise Lines, lost bridge propulsion control of the main engine and rammed the docked U.S. Navy vessel LCM YUF907 at Palm Beach, Florida. On March 11, 1989, the Panamanian passenger vessel EUROPA STAR, operated by the Florida-based Europa Cruise Lines, rammed the docked U.S. passenger vessel ATLANTIS at Madeira Beach, Florida. On April 18, 1989, the EUROPA SUN, the sister vessel to the EUROPA STAR, rammed a boardwalk and restaurant in the same city.

The Safety Board's primary authority to investigate marine accidents directs the NTSB to investigate and determine the facts, circumstances and probable cause of any "major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating ... any marine accident inyolving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating." Sec. 304(a)(1) of the Independent Safety Board Act (49 U.S.C. Sec. 1903(a)(1). This authority, however, is not applicable to an accident in international waters involving a foreign registered vessel, even though that vessel may regularly carry U.S. citizens to and from U.S. ports. The NTSB has, therefore, invoked the more general authority contained in the Act which allows us to investigate other accidents which occur in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, or involves problems of a recurring character. The recent rejection by a court of the NTSB's reliance on this more general language to investigate the collision between the CELEBRATION and the CAPITAN SAN LUIS in international waters triggered this request for legislation.

Here are the brief details of the accident:

On the morning of February 10, 1989, the foreign flag passenger vessel CELEBRATION, registered in Liberia and operated by Carnival Cruise Lines, Inc., of Miami, struck the Cuban bulk carrier, the CAPITAN SAN LUIS, about 25 miles off the northeast coast of Cuba. The accident occurred while the CELEBRATION was returning from a seven-day Caribbean cruise with 1,580 passengers, primarily United States citizens, and 671 crewmembers aboard. Weather and visibility at the time were very good. At the time of the accident, the CELEBRATION was the newest of the Carnival fleet and is a state-of-the-art passenger vessel equipped with the most modern automatic radar system. The force of the collision cut the Cuban ship in two, killing three persons and injuring 12. The ship was struck in the aft end which separated and sank almost immediately. The CELEBRATION sustained about $1 million in damage, but no one on board the CELEBRATION was fatally injured. The circumstances of this collision could have been catastrophic. For example, if the relative speeds of the vessels were slightly different, the Cuban vessel could have, instead, struck the CELEBRATION.

The Safety Board sought to investigate the CELEBRATION accident. The ship was doing business in and out of Florida ports, but registered in Liberia. The Liberian Maritime authorities welcomed our assistance, but, when the ship's owners resisted, the Safety Board's investigation came to an end. We sought to subpoena the crew, but the subpoenas were quashed in Miami District Court. It will be of interest to the Committee to know that the District Court believed that there was no impediment in international law to our investigation. The subpoenas were quashed because the court doubted the Board's authority to make this type of investigation. In the Court's words, "it would appear reasonable for Congress to prescribe legislation authorizing NTSB to investigate accidents such as this."

The CELEBRATION accident and the District Court's opinion have served notice to all foreign flag owners that they may resist NTSB investigations. Such cooperation as we have gotten in the past may now disappear altogether.

The NTSB believes that this accident involving the CELEBRATION raises many safety issues of great importance for the safety of U.S. citizens -- safety issues that, for lack of investigative authority, will be left unanswered. The Safety Board should have this authority.

In the case of the SCANDINAVIAN STAR, the NTSB investigated the March 15, 1988 fire which occurred in international waters on the cruise ship that was registered in the Bahamas. The cruise line sought an order restraining the NTSB from holding a hearing during which subpoenaed witnesses were scheduled to appear; however, the court denied the motion.

Because the NTSB was not blocked from conducting an in-depth investigation of the SCANDINAVIAN STAR accident, important accident prevention measures were developed.

As a result of the Safety Board's ability to investigate this accident, some of the safety issues briefly mentioned earlier in our testimony include:

- The need to improve the U.S. Coast Guard's program for Control Verification or Examination of Foreign Vessels;
- The need to establish requirements to eliminate language barriers among crewmembers responsible for the safety of the vessels and passengers;

- The need to amend the Safety of Life at Sea (SOLAS) requirements to ensure that operating instructions and plans for vital and emergency ship components are written in a language understood by the ship's officers and the Coast Guard;
- The need to develop and implement written engineroom instructions for emergency procedures; and
- The need to establish requirements for the automatic shutdown of ventilation systems when smoke sensing units are activated.

This accident is but one example of the detailed investigation that is necessary to provide meaningful safety assessment to improve regulations, whether national or international.

Both the Coast Guard and the NTSB are precluded from accident reporting and investigation of accidents that occur in international waters involving foreign flag passenger vessels departing from U.S. ports with U.S. passengers, even if operated by U.S. companies.

No central data base provides comprehensive safety information on the cause(s) of passenger vessel accidents on a worldwide basis. Thus, it is difficult for the NTSB or the U.S. Coast Guard to locate information about and to learn invaluable safety lessons from all accidents of passenger vessels that involve fire, collisions, or other serious occurrences unless they are reported by the foreign flag administrations. Foreign flag passenger vessels operating to and from U.S. ports with U.S. passengers on board generally do not report accidents to U.S. authorities. The Safety Board has learned of some unreported accidents through passengers and through crewmember reports. The NTSB remains extremely concerned that serious accidents involving foreign flag passenger vessels -- particularly fires, collisions, or groundings -- with U.S. passengers on board that embark from and return to U.S. ports are not being fully investigated and that invaluable safety lessons may be lost.

If the circumstances of these accidents were made known, perhaps action could be taken to prevent them from happening in the future. Although foreign flag administrations in some cases may investigate the accidents, the depth of the investigation may not be as detailed as an investigation by the U.S. Coast Guard or the Safety Board.

The fact that an accident occurs in international waters, instead of U.S. waters, is fortuitous. Americans expect, and are entitled to, thorough, searching inquiries into transportation accidents that affect them. In the aftermath of an accident, the travelling public should not be dependent on the flag state or vessel operator for vital information on the cause of the accident and needed measures to prevent the accident and injuries. American passengers aboard foreign flagged vessels operating to and from U.S. ports are entitled to the same level of safety oversight as exists in other transportation vehicles.

Toxicological Test Results

The Safety Board believes that the post-accident/incident toxicological testing regulations that have been promulgated in the various transportation modes, including testing of federal employees in safety sensitive positions, is too limited for the Safety Board to obtain the necessary information to establish the role of drug use, whether licit or illicit, in accident causation. These limitations include the collection of urine only, testing for only five drugs not including alcohol, setting cut-off levels for these five drugs too high, and an allowance of up to 32 hours in the collection of

urine after the accident. While the Safety Board is not seeking legislation in these areas, we have made safety recommendations to the Department of Transportation regarding our concern.

Another limitation in the testing of federal employees in safety sensitive positions is the inability of the Safety Board to either obtain the results of the urine testing done under federal authority and/or the authority to obtain blood and urine specimens for the Safety Board's testing that includes a broader toxicological screen.

To enable the NTSB to fulfill its safety responsibilities, Congress has vested the NTSB with the necessary powers to conduct timely, in-depth investigations. For example, in accidents involving fatalities, the NTSB has the extraordinary authority to order and to obtain results of autopsies and other tests (toxicological tests for drugs) on persons who die in accidents. The purpose of this authority is to enable the accident investigators to proceed with their investigations with minimum delay and thus overcome difficulties where information is dependent upon the consent of next of kin or compliance with State procedure. The information the NTSB has obtained from these tests has resulted in countless improvements in transportation safety.

One of the most (if not the most) important objectives of post-accident/incident drug and alcohol testing is to determine whether such substances caused or contributed to the cause of a transportation accident/incident. For years, the NTSB has advocated meaningful post-accident/incident toxicological testing of persons who may have been involved

in the cause of transportation accidents and incidents.' Partly as a result of the NTSB's efforts, limited post-accident toxicological testing programs have proliferated, although most of these programs are inadequate. Meaningful post-accident/incident testing requires the collection of blood and urine as quickly as possible after the accident or incident, preferably within 4 hours.

The use of the results of drug testing by the NTSB has led, and will continue to lead, to the development and implementation of recommendations and procedures to prevent accidents. Without the results of meaningful tests, the actual cause of an accident may be extremely difficult to establish. For example, without access to records reflecting the post-accident toxicological tests, accidents which are in fact caused by alcohol or drug use may not be identified because of the absence of reliable, scientific data and the opportunity for effective remedial measures is lost. Therefore, impediments to post-accident/incident toxicological results undermine transportation safety.

The Safety Board is prohibited from obtaining test results under Executive Order 12564 which provides for the testing of Federal employees for 5 illegal drugs, not including alcohol. Release of test results to the NTSB can be only through written consent of the employee.

If Federal employees in safety-sensitive positions, such as air traffic controllers, are free to withhold the results of post-accident/incident toxicological test results from the NTSB, the NTSB's mandate to determine and publicly report the facts, circumstances, and probable cause of the occurrence and to develop safety recommendations are jeopardized.

This issue arose following a fatal aviation accident on August 14, 1989, near Edison, New Jersey. The air traffic controller at the New York Terminal Radar Approach Control (TRACON) who had provided radar services to the deceased pilot, was given toxicological tests following the accident. However, the Federal Aviation Administration refused to provide the results of the tests to the NTSB citing the provisions of the above Executive Order. A direct request to the controller for the results of the tests produced a refusal from the controller.

In contrast, testing results from persons in the private sector are released to the NTSB without the consent of the individuals. The Safety Board believes there should be no difference in the disclosure to the NTSB of toxicological test results of private persons and Federal employees. We firmly believe that Congress should eliminate this impediment to transportation safety that is created when the NTSB's access to appropriate specimens and test results in the context of an accident/incident investigation is restricted. These restrictions must be addressed and resolved.

Mr. Chairman, that completes my statement. I will be happy to respond to questions.

Senator FORD. Let me just ask you a question based on the final part of your testimony there. It appears that there are a variety of procedures relating to testing and who has the authority over the release of those tests. We probably would run into some arguments as they relate to the First Amendment, constitutional rights, et cetera.

Is there anything that you or the Board have been working on to try to find some way in which we might expedite that with an agreement among the various groups that would be involved in transportation accidents? I should say the possibility of being involved of those in a transportation system.

Mr. KOLSTAD. Mr. Chairman, unfortunately, the DOT has agreements through the executive order with these employee groups and with the parties who are contracted to do the testing of the Federal employees not to disclose the results.

Senator FORD. We have been known to vitiate contracts around here. You know, we just do those things. It does not seem to bother some. Where no monetary value is involved we could look at it a little harder.

I suggest that we should start on that because if it is negative and is not released, the imagery is that it is positive because of the refusal to reveal it in a timely manner.

Mr. KOLSTAD. Precisely.

Senator FORD. It cuts both ways, I suspect.

Mr. KOLSTAD. Absolutely.

Senator FORD. Mr. Chairman, I remember the long period preceding your nomination and confirmation as Chairman of the National Transportation Safety Board. There were probably some internal disagreements and maybe struggles that should have been prevented.

Can you tell me how you feel the functions are proceeding now? Has the Board become more of a collegial body in making its decisions?

Mr. KOLSTAD. I think, Mr. Chairman, that is has. It was important to get the long period of uncertainty behind us, and I think that has been done.

There were a number of rumors with respect to the reorganization. I had talked with the Board members about some changes which I think we all felt were necessary in the structure of the Board and the way it was organized. The Board had not gone through any kind of a reorganization in more than 14 years, so during the period that I was Acting Chairman that is one of the areas that I spent a lot of time on.

I think that the structure we have now makes consummate good sense both from an accident investigation point of view and from the point of view of issuing the reports in a timely manner and doing it with a great deal more quality and effectiveness in the implementation of our recommendations. That, to me, is really the measure of the Board's effectiveness. We issue about 500 recommendations a year, and on the day we issue them they become national news. Unfortunately, in the next week no one remembers, including the person who receives the recommendation, what the subject was.

By establishing a new Office of Safety Recommendations which is going to work principally on implementation, the Board's effectiveness will be greatly enhanced.

Senator FORD. What would be the average time? You have some accidents that are more severe than others, more detailed than others, et cetera. What kind of average do you think there will be in making a report compared to what you have been able to do in the past?

Mr. KOLSTAD. I am hopeful for an eight-month time period for the issuance of reports. If we can do better than that, of course, I want to. I think it is going to take some time to get to that eight-month point. We are in the process of bringing some technical writers on board.

I think that eight months is a meaningful time frame to shoot. It is one that the Board had back in 1980, for example, when we had 400 people and a much lower accident level in terms of the major accidents than we have now. So I think that is a reachable goal.

Senator FORD. I think if you reduce the time period by a third and still are able to give better quality reports, that will be a significant contribution, and I applaud it.

What would you consider the most critical safety recommendations which the National Transportation Safety Board has made; maybe the top few? I do not necessarily want them all, but can you give me a list of ones that you think are critical to our safety?

Mr. KOLSTAD. Senator, one of the initiatives that I want to try, and I am convinced we can make successful, is to take ten safety recommendations that the Board deems to be the most important in terms of transportation safety in all modes and highlight those in a ten most wanted list which we would publish, frame and hang in the hallway of the NTSB and to which we would give considerable notoriety.

The Board is at the present time grappling with a list of recommendations from which we are hoping to choose ten. I can certainly give you one that I believe will be on that list, and that is the passage by the states of administrative per se legislation which would allow us to get drunk drivers off the road. I think that measure in itself will probably save more lives than any other single thing that we can think of in the short term. That recommendation, for sure, should be on the list.

I think that there may be others with respect to aging aircraft. There is a list of about 50 we are choosing from.

Senator FORD. So you are going to have the Ten Commandments of Safety, I guess?

Mr. KOLSTAD. Almost. It is going to be very similar to the FBI ten most wanted list. As these recommendations become implemented, as I hope they will, then we will have another ten to take their place. As we have recommendations come forward that we determine are more important than ones that are currently listed, those will take their place.

Senator FORD. You have indicated in one of the ten the aging aircraft problem. Are you satisfied with the FAA's efforts in the area of aging aircraft? Under the ten most wanted do you plan to do any studies as it relates to aging aircraft?

Mr. KOLSTAD. Aging aircraft is a matter which we are continually monitoring. I guess if we had to answer, are we happy today, no. We are happy with the progress that FAA is making in addressing the issue, however, and we have a continuing dialogue with them on the subject.

We continue to be concerned about the human factors aspects that are involved in the inspection of aircraft, and I am pleased, that the FAA has moved to establish an Office of Human Factors within the FAA and has funded it fairly substantially and have put a nationally recognized expert in charge.

Another thing that the FAA has done is to hire a substantial number of new inspectors. We want to ensure that those new inspectors are adequately trained before they go on the job, and that they not just go over paperwork but that their inspection involves actually looking at aircraft.

There is clearly a requirement that as aircraft reach their economic design life that they be looked at more carefully.

Senator FORD. Do you believe the air carriers adequately address human factors training for their pilots?

Mr. KOLSTAD. I think the industry has been doing a better job, Senator, than they were doing three years ago. I think it has been a learning process, but by and large I think that the industry seems to be totally on board in terms of the value of a CRM program. We have written to every carrier and made recommendations to every carrier in the industry, and have followed up with letters asking them to outline what their program is and, in fact, if they have a program. This goes to those who are leasing aircraft also.

I think that, by and large we have responses from virtually everyone indicating they have some form of CRM program. It obviously differs in extent, but that was not true three years ago. So I think there has been great improvement in that area. It is one that has an extremely high priority at the Board and one that we continue to monitor.

Senator FORD. Your statement mentions, quoting, "continuing efficiencies in the oversight of airline company operations" by FAA.

What improvements have you recommended or do you recommend?

Mr. KOLSTAD. I think the basic improvements that we have recommended are to increase the work force of inspectors, and to improve the training. There are areas in which we have found inspectors on the job who have assignments that are far greater than they can possibly hope to accomplish with any degree of thoroughness.

For example, the Aloha accident and an accident that occurred last year with Aloha Island Air highlighted the fact that the FAA had assigned far too great a responsibility to the inspectors that extended out to the Pacific Rim. There is simply no way that you can provide adequate oversight of a commuter operating in Hawaii if you also have carriers that you are trying to oversee in Singapore, Hong Kong and Tokyo. The FAA has moved to correct that.

Training continues to be a constant concern. I think the FAA is doing a relatively good job of addressing that.

So I would say, to summarize, training, the numbers of inspectors and better supervision of the work assignment have been issues we have addressed to the FAA through recommendations.

Senator FORD. I have just a couple more questions, but while we are on aircraft, the Air Line Pilots Association, ALPA, will testify following you here this afternoon on the need for amending the Independent Safety Board Act to safeguard the use of information derived from cockpit voice recorders.

What is your view of the proposed amendment, and is the Board taking steps to protect the disclosure of CVR information?

Mr. KOLSTAD. Senator, ALPA first proposed the bill to the House Public Works Committee earlier this spring, and we have been working with ALPA since that time. We have had a number of meetings with them on this subject.

Senator FORD. I have found they are not too hard to work with.

Mr. KOLSTAD. We see some merit in the proposal. We are working out some minor differences. We do not have a Board position as yet, but I expect that probably within the next three or four days. I will immediately send a copy to you as well as to Chairman Oberstar.

We understand the concern. The concern is that today we are bound by a rule that forces us to release the transcript of a cockpit voice recording from an aircraft accident no later than 60 days after an accident. By doing this it tends to create attention and to draw attention to an accident without more factual information. It tends to highlight information that if taken out of context can do harm to private individuals. We think that that can be improved upon.

The 60 days was arrived at because it was generally determined that the board held a public hearing at this time. The concept was, that since we are usually releasing it within 60 days at our public hearing anyway, let us make it a 60 day rule.

In many cases the problem is that we do not have a public hearing on every accident. In those cases once the media coverage of the accident has occurred and 60 days goes by, suddenly you have the release of this cockpit voice recording that tends to put the circumstances of the accident in a context that may not be an accurate one.

I think that the Board will adopt the position that is more in keeping with the release of the transcript at the time when the majority of the other factual reports relating to the accident are released.

Senator FORD. I assume that you are working with ALPA in that regard.

Mr. KOLSTAD. Absolutely.

Senator FORD. That is fine.

You talked about the marine aspect, and let me ask you a question about that since you are so deeply involved. You are asking for an expansion of your role in investigating the accidents in international waters involving passenger ships that embark and depart from U.S. ports.

Why is this necessary?

Mr. KOLSTAD. It is necessary because today cruise vessels that operate out of U.S. ports and carry predominantly North American

passengers are not required to report accidents, and if an accident or incident occurs at sea there is nobody, including the U.S. Coast Guard, that has authority to try to find out what happened. Therefore, other than the country of the vessel's flag, which in most cases is either the Bahamas, Liberia or Panama, no one else to conduct an investigation. In most cases, an investigation conducted by one of those three countries does not involve safety recommendations.

We think it is important that the NTSB have the ability on a discretionary basis, to conduct an investigation of accidents that occur at sea so that we can make the kind of recommendations we think are appropriate to prevent a similar kind of accident.

Because these vessels are getting larger and because about 80 percent of them are home ported in the United States, we think it is important that the public have the additional oversight they enjoy in other forms of transportation.

Senator FORD. I think you support your position very well, and I am not sure whether it would be necessary for us to make statutory language as to the agreement, I suspect, between you and ALPA as it relates to the release of the cockpit recorder.

I think Senator McCain and I have said that we would be glad to propose that jointly upon the agreement, and I intend to keep my word. So as soon as you folks have an opportunity to arrive at an agreement and it is necessary for us to put it into language, we would like to just go ahead and stick it on the authorization bill and move it forward.

I do think that where we have thousands and thousands of Americans who are embarking as passengers on ships which are foreign vessels whose work is basically 80 percent here, we should have an opportunity to protect our people in the same way we look at other things.

Do you have any other points or statements you would like to make, or is there anything I have overlooked that you would like for me to get on you about?

Mr. KOLSTAD. I cannot think of a thing, Senator.

Senator FORD. You cannot think of anything?

I am going to let you keep your schedule. I do appreciate your coming today, Mr. Chairman, and I look forward to working with you. I thank your colleagues for being there to support you. It was obvious that you were well prepared for this hearing.

Mr. KOLSTAD. Thank you very much, Mr. Chairman.

Senator FORD. Thank you very much, Mr. Chairman.

The next witness will be Captain Henry A. Duffy, President, Air Line Pilots Association.

Captain, we are delighted to see you. You are a regular figure here. You are doing like everybody else. You have your support team with you, so we are very pleased to have you.

Henry, we have your statement, of course, and if you would like to highlight it or give it all, whatever suits you. We have done this before, so it is up to you, my friend.

STATEMENT OF HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY JIM JOHNSON, LEGAL STAFF; AND HAROLD MARTHINSEN, DIRECTOR, ACCIDENT INVESTIGATION

Mr. DUFFY. Thank you, Mr. Chairman. With me today is Mr. Jim Johnson on my left, who is a member of ALPA's legal staff, and Mr. Harold Marthinsen, who is ALPA's Director of Accident Investigation.

I will give a shortened version.

On behalf of the 42,000 pilots that ALPA represents from 50 airlines in this country, we appreciate this opportunity to discuss the need to amend current legislation to protect information on cockpit voice recorders from misuse. Cockpit voice recorders were first required to be installed in the air carrier aircraft in 1965. The principal reason for the requirement was to glean information regarding the flight crew's communications in the cockpit immediately before a crash. CVRs were particularly important in obtaining firsthand information in those cases where the crew did not survive.

At the time it was recognized by all of the interested parties that CVRs were an unprecedented intrusion into the workplace and an invasion of personal privacy. These concerns were outweighed, however, by the need for information from the flight crew in order to determine the cause of the accident so future occurrences could be prevented.

To guard against unwarranted invasion of privacy, the Federal aviation regulation requires that CVRs be used only to assist in determining the cause of aircraft accidents. Further, the CVR was not permitted to be used in any punitive action against the flight crew.

With those assurances, ALPA fully supported the CVR requirement. Indeed, since that time the CVR has proven to be a valuable tool in determining accident causes, and ALPA has continued to support the use of the CVR in accident investigation.

Moreover, ALPA has consistently promoted the enhancement of CVR equipment to allow for a clear and unambiguous transcript of the recorded sounds and voices to assist accident investigation. To this end, our board of directors has endorsed the installation of hot microphones. Hot microphones are those that are wired directly to each crew member's audio channel of the CVR. This arrangement would improve the quality of recording and help prevent misinterpretation of recorded sounds.

With the enactment of the Freedom of Information Act and the increased news media interest in aircraft accidents, the promised protections for CVR information began to erode. Portions of the CVR transcripts began appearing in the news media which resulted in premature speculation and misinformation as to the cause of the accident. The media stories often resulted in unwarranted and unfair accusations being made against the flight crews and others involved in the accident. You can imagine the anguish this causes the crew members and passengers if they survive, not to mention the families.

As a result of this misuse of the CVR, Congress in 1982 enacted legislation to preclude premature public disclosure of CVR informa-

tion. This legislation prohibits the release of the cockpit voice recorder transcript until 60 days after the accident or at the time of the public hearing and provides that only those portions of the CVR information relevant to the accident can be released.

The intent of this legislation was to enforce assurances made to pilots that the CVR would be used only for accident investigation. Unfortunately, recent events have revealed that this protective legislation, although well intended, has not fully achieved its goals in two respects.

First, while premature release of the CVR information is prohibited by the statute, leaks have continued. There are two recent examples where someone ignored the statute. In the Northwest MD-82 accident in Detroit in August 1987, excerpts from the CVR recording were published in the "New York Times." This occurred prior to the first meeting of the cockpit voice recorder group, the group of interested parties that is tasked by the NTSB to formulate the eventual CVR transcript. In our view, the information must have been leaked to the "New York Times" by a government employee, since they were the only ones with access to the tape prior to the meeting of the CVR group.

Another example of misuse of the CVR transcript is the Delta 1141 accident which resulted in national press publication of personal conversations between the flight crew members. In the official NTSB cockpit voice recorder transcript and in the final accident report, the specific text of the flight crew conversation was omitted because the CVR group determined that it was not pertinent to the accident.

The penchant for sensationalism by the press resulted in the misleading focus by the news media on the nonpertinent conversations rather than the air safety factors associated with the accident.

The second area of concern is the release of the entire CVR tape as opposed to a transcript. Recently a Texas state court released the CVR tape of Delta 1141 to a local newspaper that resulted in the playing of the actual tape on a national news program.

We are also aware that a commercial firm produces videos for litigants which incorporates the actual CVR with the simulation of the event. This firm uses such a simulation of the Delta 191 accident with the actual CVR recording as an advertisement for its firm at trade shows. The pilot community is outraged by this misuse of the CVR tape by the news media for sensational news purposes and others for commercial gain.

Pilots view these public disclosures of CVR information as a breach of the government's promise to them that CVR information would be limited to accident investigation only. We are concerned that the recent misuse of the CVR for purposes other than accident investigation will inhibit crew communication in the cockpit to the detriment of both flight safety and accident investigation.

ALPA recognizes the right of the public to know relevant information concerning air crashes. Public disclosure of the CVR, however, should be made either at the NTSB's public hearing or when it issues its formal report, whichever comes first. In the event there is no public hearing, release of the CVR transcript would occur when the majority of the other factual documents regarding the accident is placed on the public docket, as the chairman just said.

This would preclude speculation in the news media regarding the accident based principally upon the CVR.

The release of the CVR at the same time as other relevant information regarding the accident would allow the CVR to be considered in the proper perspective with the other information.

To stop the unauthorized leaks of the contents of the CVR, we proposed legislation to the House Aviation Subcommittee that would impose a criminal penalty for unauthorized disclosure of CVR information. Since I testified on March 21, 1990, however, the Board has advised us that internal procedural changes have been made which it firmly believes will stop the premature disclosure of CVR information. If these procedural changes are effected, then corrective legislation is not needed. We are, therefore, withdrawing our proposal for criminal penalties for unauthorized release of CVR information. However, if these new procedures prove ineffective we will again propose such legislation and would expect the Board to join us if it is unable to protect the CVR information.

We firmly believe that our other concerns can be alleviated by some minor amendments to the current legislation regarding the CVR. We provided the staff with proposed language that would accomplish this. This language was carefully crafted to balance the competing interests of the flight crew members, the public and the litigants. Our proposed amendments would prevent misuse of the CVR information, yet protect the public's right to know relevant information about aircraft accidents as well as insure that private litigants could have access to CVR information that is necessary to pursue their claims in a court of law.

We would urge that the committee adopt our proposed amendments, Mr. Chairman, and I thank you for this opportunity to testify.

Senator FORD. Thank you very much, Captain Duffy. You heard me in my question to Chairman Kolstad. It appears that there may be an agreement within several days, probably the first part of next week. He indicated in the next several days. Assuming that proposal is accepted by you, I think we will pursue that very quickly.

Mr. DUFFY. That agreement, I think, does need to be codified.

Senator FORD. I agree with you where we have different departments doing different things. You heard in the testimony everybody kind of has their own thing going. This is something that you want in place, I believe. I think you have to be satisfied that the leak problem is adequate.

Mr. DUFFY. We appreciate their concern. They have listened very carefully to our concerns, and that has not always taken place. We are satisfied at this point with what they are proposing.

Senator FORD. You mean the Board is listening to you now?

Mr. DUFFY. Yes, sir.

Senator FORD. Is that not wonderful? You do not have a czar there anymore.

Let us move on. In what ways would you like to see the FAA or the air carriers address the human factors training for pilots?

Mr. DUFFY. I listened very carefully to Chairman Kolstad's answer. I think there has been substantial progress. Cockpit resource management is taking place now. Training is taking place

at most airlines, as well as line oriented flight training. All of the things that we have been calling for for many years, we are just starting to see the results. So we are encouraged by that.

We want to keep it a very high visibility item, however, Mr. Chairman, because we feel so strongly about it, particularly as the new technology airplanes are coming on line where there is going to be a necessary shift in training. We are learning a lot as we go along here, and the human factors are such an important part of that.

First of all, we are glad to see the new department in FAA established with the attention they are giving it, increased attention by the NTSB, all of which translates into increased focus by the airlines.

Senator FORD. Do you have any comment as it relates to aging aircraft?

Mr. DUFFY. ALPA participated in the FAA-sponsored industry task force on aging aircraft, and we are satisfied with the results and how they are now being implemented.

Again, I think Chairman Kolstad hit it very accurately. We are learning a lot about this as we go along. I think the Aloha accident was an eye opener for everybody.

I think we have taken the necessary steps at this point to implement new corrective procedures and new inspection procedures. We are going to have to see now if those are adequate. We feel they are adequate, and if they are adequately implemented then we are comfortable with the results but we are going to be watching it very closely.

Senator FORD. Does my memory serve me right that a couple of the major aircraft manufacturing companies are doing a lot of research as it relates to aging aircraft where they take off, pressurize it and land? This is in the research on the ground.

Mr. MARTHINSEN. Yes, sir. They have been doing this for a number of years now. They pressure test the fuselage constantly.

Senator FORD. In the pressurization of the fuselage, are we learning that maybe an aircraft can be—I do not know what the word is, but when you strip it and put a new cover back on it or some other things, will it extend the life of it safely? Do you have any comment as it relates to that?

Mr. DUFFY. That is the purpose of these modifications, to increase the life of the structure.

Senator FORD. So the age of the aircraft, as long as the structure is solid and safe, is not necessarily what we want to be concerned about? It is a concern, but with the studies and improvements that does give the traveling public some sense of safety?

Mr. DUFFY. Yes, sir. I think Chairman Kolstad hit on the keystone of the whole process, the inspection. There is a human factors element there. If the inspections are not adequate, then the whole concept of this aging fleet goes out the window.

Senator FORD. We are getting into some interesting recommendations from the Department of Transportation as it relates to aviation, new taxes, a facility head tax to reduce the cost to the Federal Government and put it on the locals' back, doing lots of things.

I think we have to be very careful that we do not allow so many things to be transferred to the locals that we do not bring it in here

where we have some control to be sure inspections are done right, the safety features at the airports are correct, the landing equipment is inspected and all those things. We cannot allow those things to get away from us in an effort to try to shift the expense to the locals and help reduce the deficit up here.

There are certain things that I have to be concerned about, at least in my own mind, because I fly with you fellows weekly, the cost and the safety. It is the reverse, safety and cost. Safety is first, and it is first in your mind; but the passenger, the consumer, is also concerned about the cost.

I appreciate your having your people here today, Captain. We look forward to working with you more in the future.

Mr. DUFFY. Thank you, Mr. Chairman.

Senator FORD. Thank you very much. This hearing is adjourned.

[Whereupon, at 3:05 p.m. the hearing was adjourned.]

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